



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**  
FROM CONCEPT TO CONSTRUCTION

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**Date:** April 4, 2017  
**To:** Interested Person  
**From:** Lauren Russell, Land Use Services  
503-823-7817 / [Lauren.Russell@portlandoregon.gov](mailto:Lauren.Russell@portlandoregon.gov)

## **NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has approved a proposal in your neighborhood. The mailed copy of this document is only a summary of the decision. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

### **CASE FILE NUMBER: LU 17-126403 AD**

#### **GENERAL INFORMATION**

**Applicant:** Stephen Ngai | Portland Water Bureau  
1120 SW 5th Ave #600  
Portland, OR 97204

**Owner:** City of Portland | Bureau of Parks and Recreation  
1120 SW 5th Ave #1302  
Portland, OR 97204

**Site Address:** Council Crest Park

**Legal Description:** TL 100 34.66 ACRES, SECTION 08 1S 1E  
**Tax Account No.:** R991080920  
**State ID No.:** 1S1E08 00100  
**Quarter Section:** 3426  
**Neighborhood:** Southwest Hills Residential League, contact Nancy Seton at 503-224-3840.

**Business District:** None  
**District Coalition:** Southwest Neighborhoods Inc., contact Sylvia Bogert at 503-823-4592.  
**Plan District:** None  
**Zoning:** OSc,p – Open Space zone, Environmental Conservation overlay zone, Environmental Protection overlay zone

**Case Type:** AD – Adjustment Review  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

#### **Proposal:**

The applicant proposes improvements to Council Crest Tank, the water tank located in Council Crest Park. These improvements include replacing the existing steel roof on the tank with an aluminum geodesic roof; replacing the upper 78 inches of the tank wall with a new 108-inch wall section to allow for water movement for seismic activity; painting the exterior and interior of the tank; replacing the ladder, safety equipment, and instrumentation on the tank; and

repairing the grout at the tank's foundation. Per Zoning Code Section 33.100.200.B.1 and Table 110-5, the maximum height for basic utility structures in the OS zone is 50 feet. The existing water tank is 72'-3" tall and the proposed improvements would increase the height by 2'-6". Therefore the applicant requests an Adjustment to increase the height of the water tank from 50 feet to 74'-9".

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A through F of Section 33.805.040, Adjustment Approval Criteria, have been met.

**ANALYSIS**

**Site and Vicinity:** The subject site is a 34.66 acre lot that is bordered by SW Fairmount Boulevard to the west, SW Talbot Terrace to the north, SW Fairmount Boulevard to the east, and SW Council Crest Drive to the south. The site is currently developed as Council Crest Park, which includes paved and unpaved paths, a dog off-leash area, picnic tables, Vista Circle plaza, public art, the Council Crest Tank, and a 439-foot tall radio transmission tower. Properties surrounding Council Crest Park are developed with single-dwelling residences.

**Zoning:** The Open Space zone is intended to preserve and enhance public and private open, natural, and improved park and recreational areas identified in the Comprehensive Plan. These areas serve many functions including providing opportunities for outdoor recreation; providing contrasts to the built environment; preserving scenic qualities; protecting sensitive or fragile environmental areas; enhancing and protecting the values and functions of trees and the urban forest; preserving the capacity and water quality of the stormwater drainage system; and providing pedestrian and bicycle transportation connections.

The Environmental Conservation (c) overlay zone conserves important resources and functional values in areas where the resources and functional values can be protected while allowing environmentally sensitive urban development.

The Environmental Protection (p) overlay zone provides the highest level of protection to the most important resources and functional values. These resources and functional values are identified and assigned value in the inventory and economic, social, environmental, and energy analysis for each specific study area. Development will be approved in the environmental protection zone only in rare and unusual circumstances.

The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources.

While the subject site includes both environmental overlay zones, Council Crest Tank is not located within either of these overlay zones. Therefore the overlay zones do not apply to this proposal.

**Land Use History:** City records indicate that prior land use reviews include the following:

- CU 061-70 (LU 70-002456): Staff report only; final decision not known; recommendation of denial.
- CU 092-74 (LU 74-003389): Conditional use approval for a park improvement.
- LU 07-137780 CU ZE: Approval of a conditional use for a basic utility to replace an existing 439-foot radio transmission tower that exclusively hosts public safety facilities and a reconfiguration of the security fencing; and approval of a zoning error correction to move the Environmental "p" overlay zone.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed March 6, 2017. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services responded with no concerns (Exhibit E-1);
- Bureau of Transportation Engineering responded that there are no transportation-related approval criteria associated with the proposed land use request and that is the scope of work remains the same at the time of building permit, Transportation will have no requirements (Exhibit E-2);
- Water Bureau responded with no concerns (Exhibit E-3);
- Fire Bureau responded that a separate building permit is required for this proposal and all applicable Fire Code requirements shall apply at the time of permit review and development (Exhibit E-4);
- Site Development Section of BDS responded with no concerns (Exhibit E-5); and
- Life Safety Review Section of BDS responded that a separate building permit is required for any water tanks greater than 5,000 gallons with a ratio of height to diameter or width that is greater than 2:1 (Exhibit E-6).

**Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the Notice of Proposal.

## ZONING CODE APPROVAL CRITERIA

### 33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

### 33.805.040 Approval Criteria

Adjustment requests will be approved if the applicant has demonstrated that approval criteria A through F, below, have been met.

#### A. Granting the Adjustment will equally or better meet the purpose of the regulation to be modified; and

**Findings:** The applicant is requesting an Adjustment increase the height of the water tank from 50 feet to 74'-9". Water tanks are a basic utility use, which is allowed conditionally in this zone. Except for minimum setbacks and parking, the institutional development standards of the single-dwelling zones apply to conditional uses in this zone (Zoning Code Section 33.100.200.B.1).

The purpose of the height limit for basic utility structures in the OS zone is stated in Zoning Code Section 33.110.245.A:

**Purpose.** *The general base zone development standards are designed for residential buildings. Different development standards are needed for institutional uses which may be allowed in single-dwelling zones. The intent is to maintain compatibility with and limit the negative impacts on surrounding residential areas.*

The existing Council Crest Tank, which was built in Council Crest Park in 1941, is 72'-3". The applicant proposes to increase the height of the tank 2'-6", which is a height increase of 3.5%, which is a minimal change that will not significantly change the appearance of the tank. Currently the tank is painted two different colors. The applicant proposes to paint the tank a solid color, either a green or light blue color, both of which are used on various

existing water tanks throughout Portland. The existing tall trees would continue to screen the tank.

The closest residence to the tank is 3501 SW Council Crest Drive, which is located more than 650 feet southwest and downhill from the tank. The increased height would not block or change scenic views to or from Council Crest Park or the nearby residences, nor would it decrease the amount of open space within the park. The character of the park and the surrounding residential areas would remain unchanged. Therefore the proposed height increase would maintain compatibility with and limit negative impacts on the surrounding residential areas. This criterion is met.

**B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and**

**Findings:** Because the subject site is located in an open space zone, the applicant must demonstrate that the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area. Zoning Code Section 33.910 defines desired character as the “preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district” and “it also includes the preferred and envisioned character based on any adopted plans or design guidelines for an area.”

Street classifications: The Portland Transportation System Plan classifies SW Council Crest Drive as a City Bikeway and Minor Emergency Response Street. The proposed Adjustment to increase the height of the water tank would not affect the classifications of the adjacent street.

OS zone purpose statement: The purpose statement of the OS zone is stated in Zoning Code Section 33.100.010:

**Purpose.** *The Open Space zone is intended to preserve and enhance public and private open, natural, and improved park and recreational areas identified in the Comprehensive Plan.*

*These areas serve many functions including:*

- *Providing opportunities for outdoor recreation;*
- *Providing contrasts to the built environment;*
- *Preserving scenic qualities;*
- *Protecting sensitive or fragile environmental areas;*
- *Enhancing and protecting the values and functions of trees and the urban forest;*
- *Preserving the capacity and water quality of the stormwater drainage system; and*
- *Providing pedestrian and bicycle transportation connections.*

The proposed Adjustment to increase the height of the water tank would not impact opportunities for outdoor recreation, scenic qualities, sensitive or fragile environmental areas, trees and the urban forest, the stormwater drainage system, or pedestrian and bicycle transportation connections. The 3.5% increase in the height of the tank would not significantly change the contrast between the Open Space zone and the built environment. Therefore the proposed Adjustment would not affect the character of the OS zone.

Southwest Community Plan: The site is located within the boundaries of the Southwest Community Plan. The relevant planning document is entitled the “Southwest Community Plan: Vision, Policies, and Objectives,” adopted in 2000. Staff has reviewed the adopted policies of this plan and has found that none of them are applicable to this proposal.

For these reasons, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area. This criterion is met.

**C. If more than one Adjustment is being requested, the cumulative effect of the Adjustments results in a project which is still consistent with the overall purpose of the zone; and**

**Findings:** Because only one Adjustment is being requested, this criterion is not applicable.

**D. City-designated scenic resources and historic resources are preserved; and**

**Findings:** City-designated scenic resources are identified on the Official Zoning Maps with a lower case “s” and historic resources are identified either with a dot or as being within the boundaries of a Historic or Conservation district. Because there no scenic or historic resource designations are mapped on the subject site, this criterion is not applicable.

**E. Any impacts resulting from the Adjustment are mitigated to the extent practical; and**

**Findings:** As discussed in the findings for Approval Criteria A and B, the proposal has no adverse impacts on the surrounding residential area, the classifications of the adjacent street, or the desired character of the area for which mitigation would be required. Therefore, this criterion is met.

**F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;**

**Findings:** Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase “p” (Environmental Protection overlay zone) or a “c” (Environmental Conservation overlay zone). Because the Council Crest Tank is not located within the environmental overlay zones that are present in certain areas of the subject site, this criterion is not applicable.

## DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## CONCLUSIONS

The proposal to increase the height of the water tank equally meets the intent of the regulations and does not affect the classifications of the adjacent street and the desired character of the area. The applicant has demonstrated that the applicable approval criteria have been met. Because the approval criteria have been met, the proposal should be approved.

## ADMINISTRATIVE DECISION

Approval of an Adjustment to increase the height of the water tank from 50 feet to 74'-9" (Zoning Code Section 33.110.245.C.1 and Table 110-5), per the approved site plan, Exhibit C-1, signed and March 29, 2017, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibit C-1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 17-126403 AD. No field changes allowed."

**Staff Planner: Lauren Russell**

**Decision rendered by:**  **on March 29, 2017.**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: April 4, 2017**

**About this Decision.** This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on February 24, 2017, and was determined to be complete on March 1, 2017.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on February 24, 2017.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: June 29, 2017.**

**Some of the information contained in this report was provided by the applicant.**

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appealing this decision.** This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on April 18, 2017** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue Monday through Friday between 8:00 am and 4:30 pm. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

**Recording the final decision.**

If this Land Use Review is approved, the final decision must be recorded with the Multnomah County Recorder.

A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **April 19, 2017**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-7617.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;

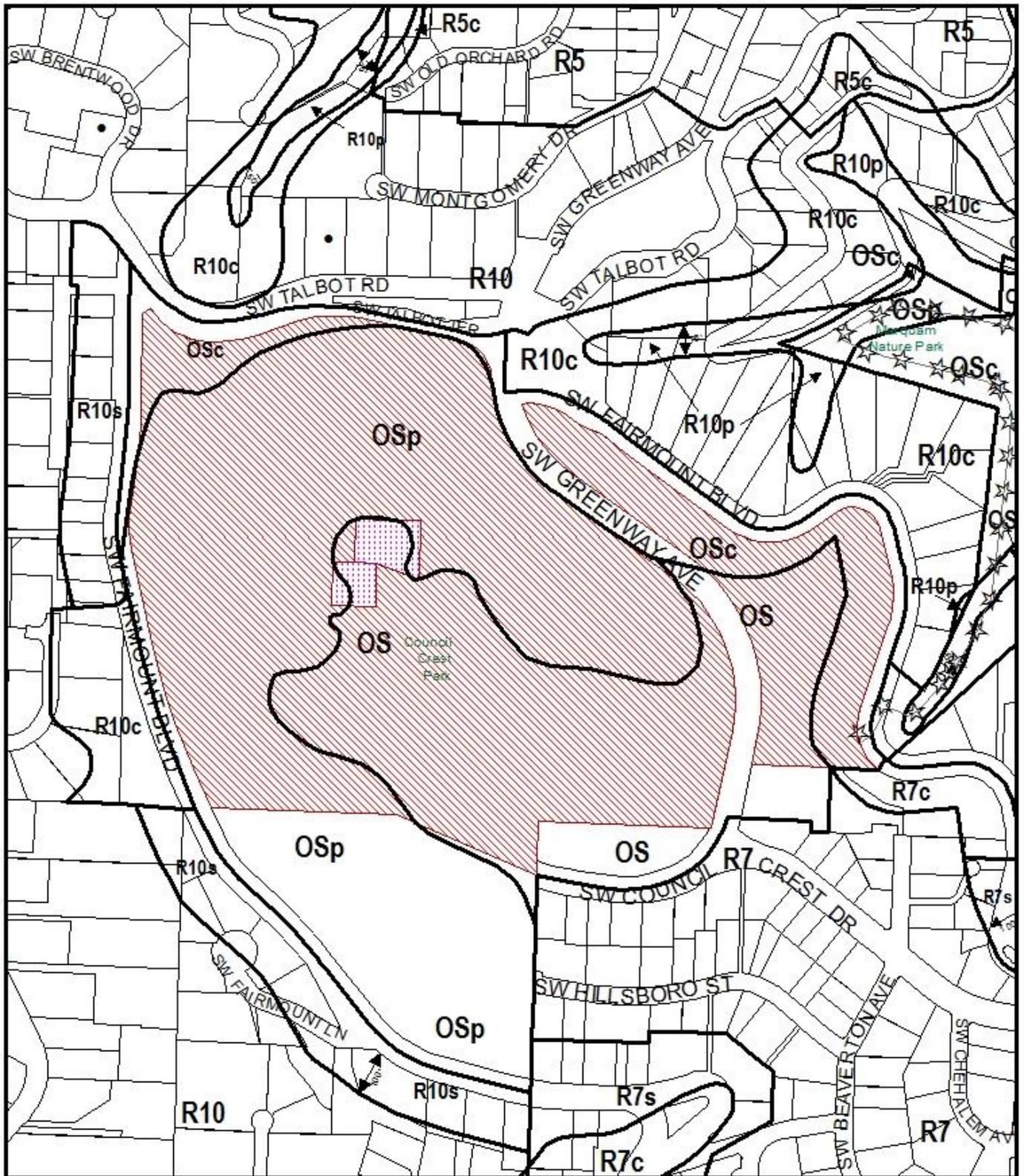
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Narrative and Site Plans 2/24/17
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
- D. Notification Information:
  - 1. Mailing List
  - 2. Mailed Notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Life Safety Section of BDS
- F. Correspondence: none received
- G. Other:
  - 1. Original LU Application

**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**



# ZONING

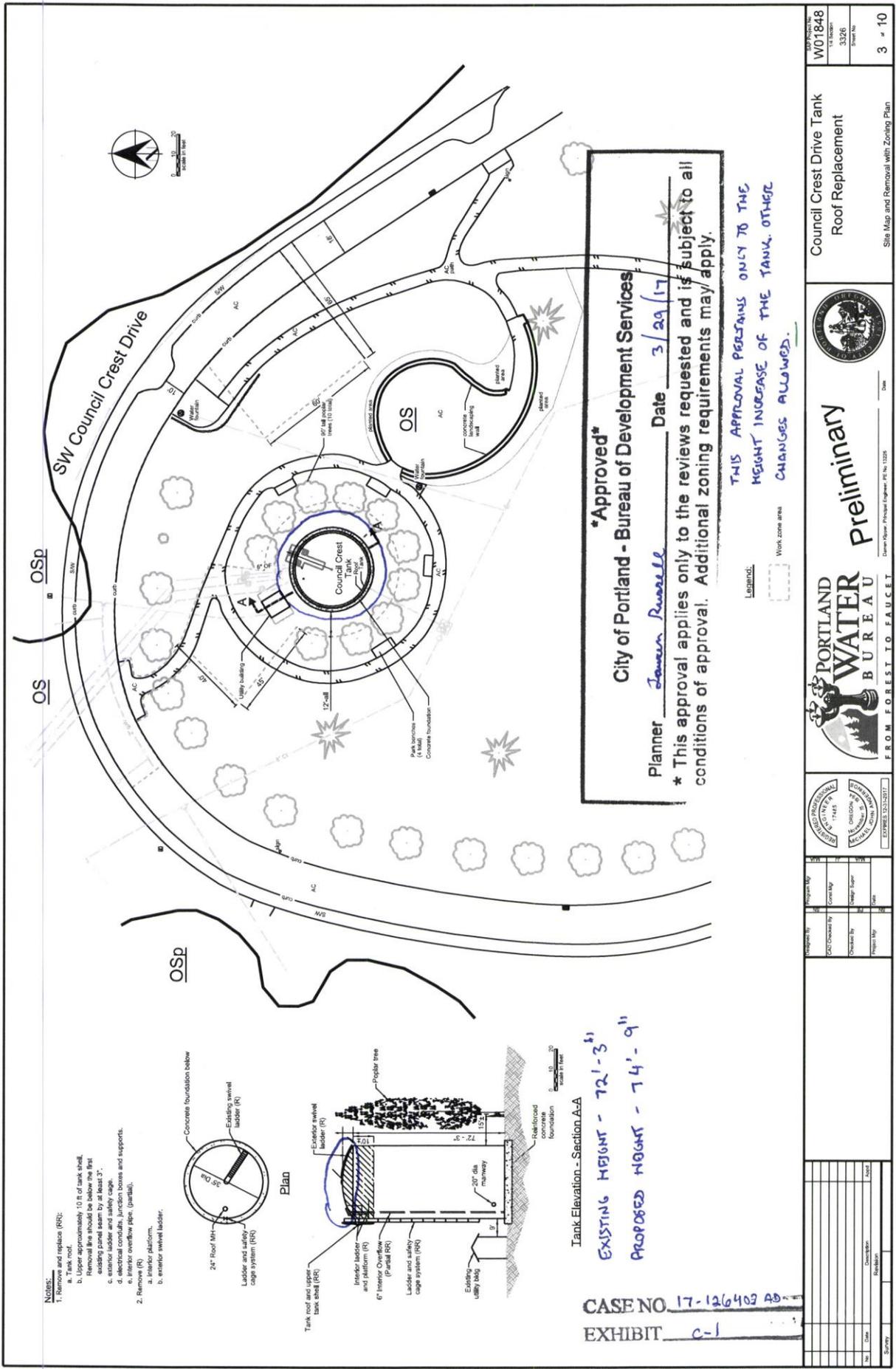


NORTH

-  Site
-  Also Owned Parcels
-  Recreational Trails
-  Historic Landmark

File No.	LU 17-126403 AD
1/4 Section	3426
Scale	1 inch = 300 feet
State_Id	1S1E08 100
Exhibit	B (Feb 28, 2017)

ADJUSTMENT REQUEST TO INCREASE THE HEIGHT OF THE WATER TANK. FROM 50' TO 74'-9".



**\*Approved\***  
 City of Portland - Bureau of Development Services  
 Planner Jamie Russell Date 3/29/17  
 \* This approval applies only to the reviews requested and is subject to all conditions of approval. Additional zoning requirements may apply.

THIS APPROVAL REMAINS ONLY TO THE HEIGHT INCREASE OF THE TANK. OTHER CHANGES ALLOWED.

FROM FOREST TO FAUCET		<b>Preliminary</b>	<b>Council Crest Tank Roof Replacement</b>
Date: _____ Design Engineer: _____ License No.: 11225		Site Map and Removal with Zoning Plan	
Project No.: _____ Revision: _____	Program Mgr: _____ Design Mgr: _____ Check By: _____ Project Mgr: _____	OS OSp	OS OSp
No. _____ Date: _____ Description: _____ Author: _____	No. _____ Date: _____ Description: _____ Author: _____	No. _____ Date: _____ Description: _____ Author: _____	No. _____ Date: _____ Description: _____ Author: _____
Summary: _____		3 of 10	

CASE NO. 17-126402 AD  
 EXHIBIT C-1

LW 17-126403 AD